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IN THE

Supreme Court of the United States

October Term, 1972

No. 72-869

BOOTSTRAP TRADING CO., INC.,
Petitioner,

vs.

PHOENIX TALLOW COMPANY and
MARICOPA BY-PRODUCTS, INC.,
Respondents.

MEMORANDUM OF RESPONDENT MARICOPA BY-PRODUCTS, INC., IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Respondent Maricopa By-Products, Inc. prays that the petition for a writ of certiorari in this case be denied.

OPINIONS BELOW

The opinions and orders of the Arizona District Court and the Court of Appeals for the Ninth Circuit are unpublished. They are correctly set forth in the Appendices to the petition.

JURISDICTION

This is a private antitrust action of which the district court had jurisdiction under 15 U.S.C. § 15. The court of appeals entered judgment on September 14, 1972, and denied rehearing on September 19, 1972. This Court has jurisdiction under 28 U.S.C. § 1254(1).

REASONS FOR DENYING THE PETITION

In this private antitrust suit a directed verdict was entered at the end of plaintiff's (Bootstrap's) case. The notice of appeal may not have been timely filed (Pet. App. 7-8), in view of Bootstrap's withdrawal of its motion for leave to proceed in *forma pauperis* when the truthfulness of its president's supporting affidavit was challenged (Pet. App. 8). Regardless of whether the notice was timely "filed" when it was first "lodged" with the district court, however, all of the succeeding steps required to process the appeal were taken far too late.*

The record was clearly not transmitted to the court of appeals and the appeal was not docketed within the time required by Fed. R. App. P. 12. A motion to extend the time for transmitting the record was filed in the district court at the last moment. The district court, after full consideration, denied that motion (Pet. App. 7-9). The court of appeals thereafter denied Bootstrap's motion for leave to docket the appeal out of time and dismissed it pursuant to Fed. R. App. P. 12(c) (Pet. App. 1).

There is not the faintest suggestion of any conflict of decision in the interpretation of the rules of appellate procedure involved or of any general importance of the procedural questions sought

*The trial transcript was not ordered within 10 days after the notice of appeal was actually filed as required by Fed. R. App. P. 10(b) (Pet. App. 8). Bootstrap never did pay the deposit required by the court reporter to prepare the trial transcript. The cost bond on appeal was found to be defective as to the form required by Fed. R. App. P. 7 and therefore void (Pet. App. 40). Bootstrap failed to timely file a designation of record on appeal as required by District of Arizona Local Rule 9 (Pet. App. 39).

to be raised. The only issue presented concerns whether the district court and the court of appeals properly exercised the discretion given by those rules based on the particular facts presented. The district court obviously found that the record cast "serious doubt upon the truthfulness" of petitioner's president and the reliability of his protestations (Pet. App. 8-9). Nothing in the petition controverts those findings. There is nothing here but an unappetizing tangle of facts unworthy of review. *See, e.g., United States v. Johnston,* 268 U.S. 220, 227, 45 S. Ct. 496, 69 L. Ed. 925 (1925); *Graver Tank & Mfg. Co. v. Linde Air Products Co.,* 336 U.S. 271, 275, 69 S. Ct. 535, 93 L. Ed. 672 (1949); *Berenyi v. District Director,* 385 U.S. 630, 635, 87 S. Ct. 666, 17 L. Ed. 2d 656 (1967).

CONCLUSION

The petition for the writ of certiorari should be denied.

Respectfully submitted,
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January, 1973